

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
OF THE WESTERN DISTRICT OF PENNSYLVANIA

CRYSTAL BYRD and BRIAN BYRD, :  
individually and on behalf of :  
all similarly situated persons, :  
Plaintiffs :  
v. : CA No. 11 - 101  
AARON'S, INC.; ASPEN WAY :  
ENTERPRISES, INC.; JOHN DOES :  
(1-100) AARON'S FRANCHISEES; :  
DESIGNERWARE, LLC, :  
Defendants :

Hearing held in the above-captioned matter on  
Tuesday, May 24, 2011, commencing at 10:14 a.m.,  
before the Honorable Susan Paradise Baxter, at the  
Federal Courthouse, 17 South Park Row, Erie,  
Pennsylvania.

Reported by Sondra A. Black  
Ferguson & Holdnack Reporting, Inc.

1       punitive class members, because you don't anyway?

2               MR. WHITE: Yes.

3               THE COURT: So there is something that can be  
4       fashioned?

5               MR. WHITE: And the accounting, Your Honor, we  
6       can tell them --

7               THE COURT: But the accounting that you describe  
8       is different than what they're asking for; is that correct?

9               MR. WHITE: It might be. I'm not quite sure what  
10      they're asking for.

11              THE COURT: You're willing to give them the list  
12      of the franchisees who have the capability for --

13              MR. WHITE: What we can give them is before we  
14      entered our appearance we can give them the list of the  
15      franchisees who requested that we uninstall the PC Rental  
16      Agent that has the detective mode on it. We can give them  
17      the list of all the franchisees that asked us to do that.  
18      And that's all we did.

19              MR. TISI: Judge, our request for relief is a  
20      little bit broader than that. Because, for example -- and I  
21      think there will be some testimony of this today, unless we  
22      can reach an agreement. For example, they have taken  
23      information off of the Internet, okay, about PC Rental  
24      Agent. And I don't have a problem with them taking them off  
25      the Internet so long as the information is not destroyed.

1           A.    Pichardo is P-I-C-H-A-R-D-O.  Adame my is A-D-A-M-E.

2           Q.    So is there anyone in between Mr. Pichardo and you  
3 when it came to chain of command at that Moses Lake store?

4           A.    No.

5           Q.    Have you ever had the occasion to know the general  
6 managers of these other stores that you worked at?

7           A.    Yes.

8           Q.    Do you know some of their names?

9           A.    Yes, I do.

10          Q.    Can you tell the Court some of those.

11          A.    Nicole Phillips; Israel Perez; Eric Harrison; David  
12 Quails; Derek, I'm not sure what his last name is, he's  
13 pretty new.  Those are the ones that I'm close knit with.

14          Q.    Have you ever heard of the product PC Rental Agent?

15          A.    Yes.

16          Q.    When?

17          A.    When I first started working for Aaron's.

18          Q.    At the Moses Lake store?

19          A.    Yes.

20          Q.    How did that come about that you heard about PC  
21 Rental Agent when you first started working?

22          A.    I was told that no computer was to leave the store  
23 without that program on it.

24          Q.    And did you have an understanding if that was just a  
25 storewide policy or broader than that?

1 Q. And ColorTyme is very similar, in terms of its  
2 business model, to Aaron's in terms of renting business  
3 equipment, computers, things like that?

4 A. Yes.

5 Q. Okay. I may ask you a couple more questions about  
6 that, but let's put that aside for a minute. Designerware  
7 is a company that markets a product called PC Rental Agent,  
8 correct?

9 A. That's correct.

10 Q. Does it do any other -- does it sell any other  
11 products?

12 A. At the current time we sell no other products. In  
13 the past we've sold consulting services, other software  
14 packages. And we still would do other consulting work for  
15 people that would be IT related.

16 Q. And you also sell -- in addition to selling the  
17 Rental Agent itself, you also provide technical support and  
18 server support for that product, correct?

19 A. Correct.

20 Q. Okay. And is it fair to say without the support  
21 provided by your server, the product really could not be  
22 used to the full extent in which it was designed?

23 A. That's incorrect.

24 Q. Okay.

25 A. Because our server is just a node on a network. So

1       our server in Erie is -- it could be a server in any place.

2           Q.    Let me clarify the question.  Without a server, the  
3       server which you provide, the Rental Agent could not perform  
4       its functions, correct?

5           A.    Correct.  Because it's a two-tiered system.

6           Q.    And you also provide, as long as the agent is  
7       used -- you receive a fee for its use for a certain number  
8       of computers, et cetera, and for how long it's being used,  
9       correct?

10          A.    That would be a fair assessment.

11          Q.    Now, do your other companies, the ColorTyme stores,  
12       use PC Rental Agents on its computers as well?

13          A.    That's correct.  Our four -- I have four ColorTyme  
14       stores, and we use it in our four stores.

15          Q.    How long has Designerware been in business selling  
16       PC Rental Agent?

17          A.    Roughly somewhere around about -- about five, six  
18       years ago.

19          Q.    And has your son, Ashton, worked with you the entire  
20       time?

21          A.    Since he got out of college, yes.

22          Q.    And when did that happen, sir?

23          A.    Roughly, I think, around four years ago.

24          Q.    What position does he hold?

25          A.    He's in charge of tech support.

1 stored on the computer, but there was a concern about  
2 keeping child pornography, for example, and then that you  
3 reconfigured your server or somehow changed it so that  
4 information would not be stored there, but essentially would  
5 pass through?

6 A. Well, there was a case where we were contacted by a  
7 franchisee, they had a computer that was being investigated  
8 for child pornography, and we made sure at that time that  
9 none of that information was ever transmitted or ever kept.

10 Q. But the point is that this product and its support  
11 can be changed to some -- either to increase the ability of  
12 the server to accept information or to narrow the  
13 information that is kept on the server or even pass through  
14 the server, correct?

15 A. You know, I never thought of it that way. You'd  
16 have to re -- the way -- I suppose you could do that. But I  
17 don't know we -- you know, what effort would be involved in  
18 changing it. It's not -- you just don't flip switches.

19 Q. Okay. Now, let me -- I'm going to come back to that  
20 concept shortly. But let me go through some other questions  
21 with you. The entire time it's been on the market  
22 Designerware has been the exclusive seller of that product,  
23 correct?

24 A. That's correct.

25 Q. And you sell PC Rental Agent exclusively from your

1 North East, Pennsylvania --

2 A. North East, correct.

3 Q. -- address?

4 A. Correct.

5 Q. And that has always been the case, correct?

6 A. As far as I know, that's correct.

7 Q. And when a company purchases PC Rental Agent from  
8 Designerware, does it enter into an agreement with  
9 Designerware?

10 A. I would say, yes, because they enter into the End  
11 User License Agreement.

12 Q. And if you would take a look at Exhibit No. 4 in  
13 your book, which has already been admitted, those are copies  
14 of the End User License Agreements, or the EULAs, correct?

15 A. That's what it looks like, correct.

16 Q. You know, I'm going to go back and ask a question  
17 that I intended to ask you before, but has the detective  
18 mode always been remotely installed or has that install  
19 method changed over time?

20 A. No. From Day 1 it's never been installed at the  
21 time of rental. It's not on the computer by using the CD or  
22 using the USB. We specifically designed the software so  
23 it's not there.

24 Q. So they have to actually engage your company and  
25 have it built into the system?



1       acknowledged and accepted the terms of this End User License  
2       Agreement?

3           A.    Yes.

4           Q.    And this is a contract.  If you go to Section 6 --  
5       excuse me, the section at the end, the miscellaneous  
6       section, it says, "This license acquired in the United  
7       States, this EULA is governed by the laws of the State of  
8       Pennsylvania."

9           A.    That's correct.

10          Q.    And so, when a franchisee purchases this, they  
11       acknowledge to be bound by the laws of Pennsylvania,  
12       correct?

13          A.    They would be -- this is the same End User License  
14       Agreement everyone acknowledges, correct.

15          Q.    Okay.  Now, in addition, they are purchasing a  
16       product -- I think you talked about the fact that they also  
17       purchase access to your web-based interface.  I have seen  
18       that referenced in your documents.

19          A.    Yes.  You guys refer to it as a portal.  Same  
20       concept, correct.

21          Q.    Would you describe for the Judge what a web-faced  
22       interface or a portal is.

23          A.    It's a -- real simple terms, the franchisee would  
24       sign in, go to a web page, put in their user ID and their  
25       password.  Based on their user ID and password, the system

1 knows, based on security, who they are. And -- and it looks  
2 like a spreadsheet -- it looks like a spreadsheet. Here's a  
3 list of all the computers that the software is installed on.  
4 And then there would be, at the top, commands that they  
5 would be allowed to issue.

6 Q. But this interface, or this portal, is here in Erie,  
7 correct?

8 A. It's -- you can say that it's here in Erie, but we  
9 also could have it in Missouri, Boston, and other places.

10 Q. I'm not asking you where it could be. I'm asking  
11 you where it is, sir.

12 A. The primary place is North East, Pennsylvania.

13 Q. So using this crude chart of mine, that would be  
14 this kind of hub area in Northwest Pennsylvania?

15 A. Yeah. What you're not showing is the other hubs  
16 that it could use.

17 Q. But you don't, for example, have a hub in Atlanta or  
18 Boston or California; we have it here in Northwest --

19 A. We have hubs in Missouri, Boston, Florida.

20 Q. Do they all act as the primary --

21 A. The primary is Erie. If Erie goes down, then it  
22 would switch to one of the alternate websites.

23 Q. Now, you provide the interface for the purpose of  
24 allowing the PC Rental Agent to actually perform its  
25 functions, correct?

1           A.    Correct.

2           Q.    Everybody who purchases this in the 48 states, I  
3           counted from the letter you sent yesterday, in which it's  
4           sold would agree not only to be bound by the laws of  
5           Pennsylvania, but also use the portal or web-based interface  
6           in Northwest Pennsylvania -- well, North East -- Northwest  
7           part of the State, North East is the town.

8           A.    I guess they drove North East and decided that's the  
9           name of the town.

10                Yeah, I guess that would be the case.

11           Q.    All right. Now, this interface exists -- we've been  
12           using the term interface, we've been using the term server.  
13           The server enables the interface, correct? I'm trying to  
14           understand the technology.

15           A.    Yeah. I say that's correct.

16           Q.    All right. Now, other than the Designerware server,  
17           is there any other equipment that is used by Designerware to  
18           support the PC Rental Agent?

19           A.    No. It would just be the server. The database  
20           server.

21           Q.    Now, who manages the Designerware server? Would  
22           that be your son, Ashton?

23           A.    It would be Ashton and myself.

24           Q.    Well, we'll discuss this more later. Can the PC  
25           Rental Agent perform its intended functions without

1       accessing Designerware's server in North East, Pennsylvania?  
2       In other words, if it were shut down tomorrow, would PC  
3       Rental Agent be able to work?

4           A.    No.

5           Q.    So that server is the necessary conduit for allowing  
6       this product to work?

7           A.    What do you mean by "this product"?

8           Q.    This product, the PC Rental Agent, will not perform  
9       its intended functions without the server here in  
10       Pennsylvania?

11          A.    No. That's incorrect.

12          Q.    Would you tell me why I'm incorrect.

13          A.    Because PC Rental Agent is really kind of a suite of  
14       software packages.

15          Q.    Then let me be more specific. And I apologize, I  
16       understand that it does some things locally on the computer.  
17       But in terms of the kill switch, in terms of the location,  
18       in terms of the detective mode, could those functions happen  
19       without access to the server here in Pennsylvania?

20          A.    The kill switch could still -- would still work  
21       without the Erie connection.

22          Q.    Would detective -- I'm sorry, sir. I didn't mean to  
23       interrupt you this time.

24          A.    That's fine.

25          Q.    Would the detective mode be able to work without the

1 server here in Pennsylvania?

2 A. You would not be able to build, install, or activate  
3 the detective mode without the web interface.

4 Q. All right. Now, when the license has been issued on  
5 the PC Rental Agent and sent to the customer, you provide  
6 the instruction manuals that we have identified as Exhibits  
7 No. 17 and 18, I think you mentioned that, correct?

8 A. Which Exhibit is it?

9 Q. Exhibit No. 17 and 18.

10 A. Exhibit No. 18 -- I don't know the difference. They  
11 all look the same. In this book they look the same.

12 Q. But they are two different documents. In fact,  
13 one's a short form -- I think one is 8 pages and one is  
14 30-something pages.

15 A. Correct. The 8-page is printed and mailed with the  
16 original CD. The -- we no longer print the 36-page manual,  
17 because nobody was reading it and it's kind of -- you know,  
18 nobody was reading it. So we make it available on -- I  
19 believe it's on the website and possibly on the CD also.

20 Q. And these instruction manuals describe both the  
21 function of the PC Rental Agent and the role of the  
22 Designerware website, correct?

23 A. For the most part, correct.

24 Q. And if you look at the first page of both documents,  
25 they're the same, correct?

1 of computers, correct?

2 A. Again, I -- that -- I have no access for  
3 determination to know what another rental store rents.

4 Q. But by its nature, each store rents multiple  
5 computers and then each computer has multiple renters?

6 A. Again, Aaron's -- that would be a question you'd  
7 have to ask Aaron's, because I don't know what their numbers  
8 are. I -- if you're using our product, I can't determine  
9 that.

10 Q. Let's move on. Let's move on. Let's talk about  
11 Aspen Way a little bit. Are you familiar with an Aaron's  
12 franchise called Aspen Way Enterprises?

13 A. Not until this litigation started.

14 Q. But you have been able to conclude that they are, in  
15 fact, and have been a customer of yours?

16 A. Correct. My understanding is they have roughly 16  
17 stores, have been a customer -- they are a customer of ours,  
18 and they're in Wyoming.

19 Q. And they became a customer of yours through  
20 acknowledging the EULA, which is Exhibit No. 4, correct?

21 A. Every time they've installed our software, they've  
22 accepted that End User License Agreement, correct.

23 Q. To the best of your knowledge, did Aspen Way install  
24 the PCRA it purchased from Designerware on computers it  
25 rented throughout its various stores?

1           A.    I have no way of knowing that.  That would be a  
2           question you have to ask Aspen.

3           Q.    Were you able to determine that they actually  
4           activated the program?

5           A.    What do you mean by "activated the program"?

6           Q.    In other words, they actually engaged the server and  
7           used it?  In other words, they didn't just install it and  
8           never turned it on?

9           A.    Turned what on?

10          Q.    Had the computer communicate with your central  
11          server here in Erie, Pennsylvania.

12          A.    They would have installed the software and the  
13          computer would have reported to the server here.

14          Q.    All right.  Let's talk about the PCRA, which, after  
15          all, is the reason why we're here.  Let's talk about what it  
16          does and what it doesn't do.

17          A.    Okay.

18          Q.    And let's actually dive right into the detective  
19          function.  Let's talk about that.

20          A.    Okay.

21          Q.    On Exhibit No. 18, if you look at your long form,  
22          the description of the detective function is contained on  
23          one page, Page 16 of 36.

24          A.    Page what?

25          Q.    Do you see that?

1 THE COURT: Let's move on.

2 Q. All right. Now, let's go to the next thing. It  
3 says, "If the agent is reporting, you may wish to tell the  
4 agent to go into detective mode, gathering information, and  
5 e-mailing it to you," correct?

6 A. That's correct.

7 Q. And the information it gathers, and we've talked  
8 about them, are keystrokes?

9 A. Correct.

10 Q. Screen shots?

11 A. A screen shot, correct.

12 Q. And photographs?

13 A. That's optional.

14 Q. It is optional. But those are the three kinds of  
15 information that can be gathered through the detective  
16 mode --

17 A. Correct.

18 Q. -- correct?

19 A. Um-hum.

20 Q. Now, it is information gathering. You consider this  
21 to be gathering information about what? About --

22 A. The thief who is --

23 Q. Might be the customer?

24 A. Well, no. They're not the customer; they have  
25 stolen the computer. They agreed to return it and didn't



1 disclose it.

2 THE COURT: Let's move on.

3 MR. TISI: All right.

4 Q. Now, let me just go in here to Exhibit No. 6 for a  
5 moment. Do you recognize that, sir?

6 A. Correct.

7 Q. What is that?

8 A. That's the login page that you would use to access  
9 our -- what you're calling the portal.

10 Q. Is this something that has to be -- I'm trying to  
11 understand, because before we talked about this is a portal,  
12 which there is constant movement through the portal. Are  
13 there occasions where, in order to get access to get  
14 information that was collected by detective mode, that a  
15 user has to actually sign in to your server before that --  
16 those e-mails are sent?

17 A. No. They would have to sign on to the server and  
18 activate the build, install, and activate sequence. But  
19 once they've done that our server is -- you don't login to  
20 the server.

21 Q. You don't have to activate it every day, for  
22 example? I didn't understand that.

23 A. No. Like you've already explained explaining the  
24 levels. Once you did that , that level works.

25 Q. Does the lock down command, which is not part of

1 the -- not part of the detective level, does that go through  
2 the Designerware website interface?

3 A. That is correct.

4 Q. That does or does not?

5 A. The lock down?

6 Q. Yes.

7 A. The lock down occurs two ways. Through the website,  
8 the person that purchased -- the franchisee that bought the  
9 software, their designated person would log on, find the  
10 computer, and issue the lock down. If the computer is  
11 unable to communicate with the server for 120 days, by  
12 default it locks down.

13 Q. Now, let me just -- one last series of questions I  
14 believe I may have here. Can you uninstall a PC Rental  
15 Agent from your location?

16 A. It's designed that way.

17 Q. Okay.

18 A. Our End User License Agreement that you've referred  
19 to, we put in there that you're only to install the software  
20 on computers that you own. And if you don't own the  
21 computer, you're not to be using my product. It's your  
22 computer, you install it.

23 And I think we have verbiage in there that you owe  
24 us \$300,000 a day per license violation. With the fear of  
25 God that the customer owns the computer, we have punitive